

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 7, 2008 Session

SANDRA L. HILL v. JAMES R. HILL

**Appeal from the Chancery Court for Williamson County
No. 31816 Robbie T. Beal, Judge**

No. M2007-00049-COA-R3-CV - Filed December 3, 2008

This case involves the dissolution of a twenty-five year marriage that produced nine children. The trial court granted the wife a divorce on the basis of the husband's fault, divided the marital property, and awarded the wife alimony *in futuro*. The court also found the husband guilty of criminal contempt for failing to timely deposit \$85,000 with the clerk and master in accordance with an agreed order. The husband argues on appeal that the trial court's property division was inequitable, that the trial court erroneously considered fault as a basis for the property division, that the alimony award was excessive, and that the contempt conviction violated his constitutional rights. We vacate the contempt conviction. In all other respects we affirm the order of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed in Part and Vacated in Part**

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

Karla C. Hewitt, Nashville, Tennessee, for the appellant, James R. Hill.

Joanie L. Abernathy, Franklin, Tennessee, for the appellee, Sandra L. Hill.

OPINION

I. A MARRIAGE OF LONG DURATION

James Hill ("Husband") and Sandra Hill ("Wife") married on January 3, 1981. Nine children were born of their marriage, five girls and four boys. Six of them were still minors on September 1, 2005, when Wife filed a Complaint for Divorce in the Chancery Court of Williamson County,

citing grounds of inappropriate marital conduct and irreconcilable differences.¹ The Complaint alleged that Husband had left the marital home on August 30, 2004, and that on August 19, 2005 while Wife and the children were away, Husband changed the locks in order to prevent their return. The proof showed that they were able to return to the marital home shortly thereafter.

Wife also claimed that Husband was guilty of extreme emotional abuse towards her and that he had inflicted severe corporal punishment on their children. Husband filed an Answer and Counter-Claim for Divorce in which he denied Wife's allegations, but stated that in the event the trial court found him guilty of inappropriate marital conduct, then the ill conduct of Wife was a justifiable cause of his own conduct. He also alleged irreconcilable differences and inappropriate conduct against Wife. Husband and Wife each asked to be named primary residential parent of the minor children.

The record shows that Wife has a nursing degree and that she worked as a nurse during the first two years of marriage. She then became a full-time homemaker to care for her growing family and to home-school the children. Husband held a number of jobs during the marriage. According to Wife's testimony, changes in his jobs and in the assignments associated with them resulted in about twenty changes of residence. The family moved to Franklin, Tennessee in September of 2003. At the time the divorce complaint was filed, Husband had been working for Manitowoc Corporation for about six years. His position as Vice President for Sales to the Western United States involved a great deal of travel, but came with a handsome salary and the opportunity to earn additional income in the form of bonuses and stock options. At the time of trial, he was living in an apartment in his employer's Wisconsin headquarters city.

Wife filed a motion for temporary support for herself and her children. The motion recited that Husband had been paying her \$500 per week as well as paying the mortgage and utilities. The motion was never heard, but the parties entered into an agreed order on June 29, 2006 which required Husband to deposit \$85,000 from his recent exercise of stock options with the court. The agreed order did not contain any specific deadline for the deposit of those funds.

On July 20, 2006, Wife filed a motion captioned as a "Motion for Civil Contempt" complaining that Husband had dissipated marital assets in violation of the statutory restraining order, *see* Tenn. Code Ann. § 36-4-106(d), and that he had failed to deposit the agreed upon \$85,000 with the court. On the same day, Wife's attorney filed a Notice of Constitutional Rights, which stated that Husband was being charged with Criminal Contempt pursuant to Tenn. Code Ann. § 29-9-101. On the following day, July 21, 2006, Father deposited the required funds with the court.

¹By the time of the divorce hearing, one daughter had reached her eighteenth birthday, leaving five minor children in the household for the purpose of calculating child support.

II. THE FINAL DIVORCE HEARING

The divorce hearing began on July 24, 2006, before Chancellor Russ Heldman. Wife testified that Husband had always been too busy to spend much time with the children and that he had never been very involved with them, but that they were very attached to her. Wife also testified that she had been faithful to Husband throughout the marriage. Husband admitted in his deposition to eight different extra-marital affairs. For his part, Husband testified that Wife was mentally unstable and that he didn't believe that she was actively engaged in caring for the children. He also testified that if the court named him as the primary residential parent, he would move the minor children to Denver where they would be closer to his parents and his sister.

The attorneys for both parties raised hearsay objections to any testimony offered as to statements by the children in regard to their relationships with the parents. After Husband was excused from the stand, the court announced that it did not want to be in the position of deciding the all-important issue of parenting time without sufficient reliable information to make a sound decision. The court accordingly declared that the hearing would be continued so a guardian ad litem could be appointed to make an independent evaluation of the situation.

After her appointment, the guardian ad litem was able to meet seven of the parties' children. She prepared a detailed report in which she stated that although the children were all different from each other, "they were all very polite, happy, charming, outspoken, bright, and loving children," that Wife had been their primary caretaker, and that Husband "was not present very much during most of their lives."

The divorce hearing resumed on August 28, 2006. The parties testified again, as did two of their older daughters. The guardian ad litem participated in cross-examination of all the witnesses, and the trial court also played an active role in questioning. The eighteen year old daughter, a student at college, testified that all the children were very close to each other, in part because the family's frequent changes of residence had made it difficult for them to form long-lasting relationships with non-family members.

The eighteen year old daughter also testified that the children loved their house in Franklin, that they liked the schools they had recently started attending,² and that they had established strong connections within their church. She further testified that her mother played the central role in raising all the children, without much participation by her father, except that the children were afraid of him because of his harsh discipline and controlling ways. The testimony of the sixteen year old daughter was consistent with that of her older sister. When Husband took the stand, he softened his criticism of Wife and withdrew his request to be named the primary residential parent. He insisted, however, that he frequently participated in recreational activities with the children, including taking all of them roller-skating and biking and playing ball with the older boys.

² After the filing of the divorce complaint, Wife enrolled the sixteen year old daughter in a private school and the other school-age children in public school

Much of the remaining testimony involved financial issues. Both parties were questioned about income and expense statements they had submitted to the court. Wife's statement set out total monthly expenses of \$11,481, which included \$1,900 per month for the home mortgage, taxes and insurance. There were a few anomalies in the statement. For example, Wife admitted under cross-examination that the \$840 listed for the children's clothing actually reflected purchases needed to get them ready for school, which would not be required every month. She also listed a monthly tithe of \$300, but acknowledged that she had not been paying that.

Husband's statement listed a gross monthly income of \$14,508 and a net monthly income of \$10,171. He projected monthly expenses, including the cost of visitation with the children, to total \$7,977. His listed expenses included a monthly tithe of \$1,000. Questioning revealed that Husband traveled on company business most of the time and that he was reimbursed for food, lodging, and other expenses he incurred on his travels. He also acknowledged that he sometimes traveled to Memphis for business and that the travel expenses underwritten by his employer might enable him to visit the children at a lesser expense than indicated in his statement.

At the conclusion of testimony, the trial court announced its decision from the bench. It stated that Wife was an extraordinarily credible witness, but that "I have questions about Mr. Hill's credibility." The court declared that Wife was entitled to divorce because of Husband's "extreme fault." It discussed the statutory factors for property division found at Tenn. Code Ann. § 36-4-121 and awarded the bulk of the marital property to Wife. The court also awarded alimony *in futuro* to Wife, stating that Husband's fault was a factor in the size of the obligation imposed.

The court then turned to the question of contempt. It stated that Husband's delay in depositing the \$85,000 with the Clerk and Master was inexcusable and declared that "I find that you're in willful and criminal contempt of not complying with your own Agreed Order beyond a reasonable doubt." The court sentenced Husband to 72 hours in jail, with the sentence to be served immediately. Husband was taken to jail, where he stayed overnight. The court then suspended the remainder of his sentence and he was subsequently released.

The court's ruling was memorialized in the Final Decree of Divorce, entered August 31, 2006. Wife was awarded the marital home and the remaining funds on deposit with the court after payment of marital debts (including \$26,000 for Wife's attorney fees, which the trial court awarded to her as alimony *in solido*). Wife was also awarded 70% of Husband's 401(k) retirement account, and half of the net proceeds of the stock options Husband acquired during the marriage, with Husband ordered to exercise the options whenever it became financially feasible to do so. Husband's support obligations included alimony of \$3,700 per month, child support in the amount of \$3,855 per month calculated in accordance with the income shares model, and continuing payment of Wife's COBRA health insurance premiums for three years following entry of the decree.

Husband filed a motion to alter or amend the court's decree, contending that there were errors in the court's calculation of child support and that the amount of alimony ordered was excessive because upwards of 75% of Husband's income was eaten up by the collective obligations of alimony, child support and COBRA, leaving him very little to sustain his own needs. Wife filed a response to the motion. Chancellor Robbie Beal conducted a hearing on the motion on November 9, 2006, Chancellor Heldman having left the bench prior to that time. The court reduced Husband's alimony obligation from \$3,700 a month to \$3,000 a month and reduced his child support obligation from \$3,855 per month to \$3,150 per month. This appeal followed.

Father does not appeal the award of the divorce to Mother, and at trial he waived any objections to her designation as primary residential parent. The only issues he raises on appeal involve the division of marital property, the alimony award, and his conviction for contempt. Since this appeal followed a bench trial, we must apply the standard of review set out in Tenn. R. App. P. 13(d). Under that standard, findings of fact by the trial court are presumed to be correct unless the evidence preponderates otherwise. Conclusions of law are reviewed *de novo*, with no presumption of correctness.

III. PROPERTY DIVISION

After identifying the marital property, the trial court is charged with equitably dividing, distributing, or assigning the marital property "without regard to marital fault in proportions as the court deems just." Tenn. Code Ann. § 36-4-121(a)(1); *Jolly v. Jolly*, 130 S.W.3d 783, 785 (Tenn. 2004). The court is to consider all relevant factors in its distribution, including those listed in Tennessee Code Annotated § 36-4-121(c). *Jolly*, 130 S.W.3d at 786; *Flannary v. Flannary*, 121 S.W.3d 647, 650 (Tenn. 2003). The court may consider any other factors necessary in determining the equities between the parties, Tenn. Code Ann. § 36-4-121(c)(11), except that division of marital property is to be made without regard to marital fault. Tenn. Code Ann. § 36-4-121(a)(1). The factors the courts should consider in making a division of the marital estate include:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
- (3) The tangible or intangible contributions by one (1) party to the education, training or increased earning power of the other party;
- (4) The relative ability of each party for future acquisitions of capital assets and income;
- (5) The contribution of each party to the acquisition, preservation, appreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled his or her role;
- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;

- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party; and
- (10) Such other factors as are necessary to consider the equities between the parties.

Tennessee Code Annotated § 36-4-121(c).

The trial court declared that it read all of the statutory factors and applied them to the facts of the case. The court noted the long duration of the marriage and the “huge contribution” that each party had made to it, the wife and mother in her capacity as homemaker, and the husband and father as wage earner. The court also observed that

Mr. Hill thankfully has an extraordinarily great ability for future acquisitions of capital assets and income earning capacity. And Mrs. Hill, quite frankly, has very little realistic future ability there. She’s worn out. She’s beaten. She’s tired. She’s been raising a bevy of kids, and you know, that’s what the plan was for Mr. Hill to work as hard as he worked and Mrs. Hill to take care of these kids.

In other words, the trial court found that Husband has a far greater future ability to acquire capital assets and income than does Wife.

After consideration of the statutory factors, the court awarded Wife the marital home, which the court valued at \$325,000, and made her responsible for the mortgage indebtedness in the approximate amount of \$249,000, leaving equity of \$76,000,³ Wife was also awarded the household furniture and furnishings. The court directed that the deposited \$85,000 be applied first to marital debt, including credit card debt, an income tax deficiency, car loans, and payment to the guardian ad litem. Additionally, \$26,000 was allocated for payment of Wife’s attorney fees, which the trial court awarded to her as alimony *in solido*. The remaining money from that fund, in the amount of about \$23,000 was awarded to Wife.

Husband was awarded his tools and other personal property and his Federal Savings Bank account, which had a balance of \$7,293. He was credited with his \$28,000 annual bonus for 2006 and \$17,000 in stock options he had exercised in December of 2005, although he alleged that none of those proceeds remained at the time of the divorce hearing. The trial court also divided Husband’s 401(k) retirement account, which had a value of \$153,000, awarding wife 70% (or \$107,100) and leaving Husband 30%, (or \$45,900). Stock options of unknown value, which Husband acquired during the marriage, were ordered to be divided equally.

³In awarding Wife the marital home, the court cited Tenn. Code Ann. § 36-4-121(d), which reads, “[t]he court may award the family home and household effects, or the right to live therein and use the household effects for a reasonable period, to either party, but shall give special consideration to the spouse having physical custody of a child or children of the marriage.”

Husband complains that the court's allocation of marital property was lopsided in favor of Wife and that it did not accurately reflect the mandate of factor (5), that the same weight be given to each party for that party's contribution to the marriage for fulfilling the role of homemaker or wage earner. He also contends that the court gave too much weight to factor (4), "the relative ability of each party for future acquisitions of capital assets and income;" and did not give sufficient weight to other factors. He particularly cites "the tax consequences to each party," and complains that the court ordered him to pay the 2005 and 2006 income taxes, while giving to Wife the majority of the funds which could otherwise be used to pay his taxes.⁴

The trial court's task is to make an equitable, or fair, distribution of property. "The trial court is empowered to do what is reasonable under the circumstances and has broad discretion in the equitable division of the marital estate." *Keyt v. Keyt*, 244 S.W.3d 321, 328 (Tenn. 2007) (citing *Flannery*, 121 S.W.3d at 650). Because the division of marital property is "not a mechanical process," and because decisions regarding division of marital property are fact-specific and many circumstances surrounding the property and the parties play a role, a trial court has a great deal of discretion concerning the manner in which it divides marital property. *Keyt*, 244 S.W.3d at 328; *Jolly*, 130 S.W.3d at 785; *Flannery*, 121 S.W.3d at 650; *Smith v. Smith*, 984 S.W.2d 606, 609 (Tenn. Ct. App. 1997)).

As a general matter, reviewing courts will evaluate the fairness of a property division by its final results. *Thompson v. Thompson*, 797 S.W.2d 599, 604 (Tenn. Ct. App. 1990). Further, "unless the court's decision is contrary to the preponderance of the evidence or is based on an error of law, we will not interfere with the decision on appeal." *Sullivan v. Sullivan*, 107 S.W.3d 507, 512 (Tenn. Ct. App. 2002) (citing *Goodman v. Goodman*, 8 S.W.3d 289, 298 (Tenn. Ct. App. 1999)). Thus, appellate courts ordinarily defer to the trial court's decision unless it is inconsistent with the factors in Tenn. Code Ann. §36-4-121(c) or is not supported by a preponderance of the evidence. *Jolly*, 130 S.W.3d at 785-86.

In the case before us, based on the duration of the marriage combined with all the economic factors and the relative situations of the parties, we cannot say that the trial court's distribution was not equitable or reasonable. Wife is forty-six years old and has not worked outside the home in twenty years. She remains deeply involved in the upbringing of five minor children, the youngest of whom was five years old at the time of trial. Although she has a nursing degree, it would take a large investment of money and time before her certification could be restored.

In contrast, Husband has had a successful career in sales and has admitted to earning over \$14,000 per month. There is thus a huge discrepancy between Husband's and Wife's ability to acquire assets and earn income. As the trial court observed, Husband will probably be able to bring

⁴There is no evidence in the record to enable us to determine what tax liability Husband will incur for 2005 and 2006 income taxes, but the record shows that he received a refund on the 2004 tax return. Husband testified that he did not file his 2005 income tax return because he had just been too busy with the divorce and with his work.

the value of his 401(k) account up relatively quickly, but there is very little possibility that Wife will be able to establish or fund a retirement account.

We have carefully examined the record, and we conclude that the evidence does not preponderate against the trial court's division of marital property.

Husband argues, however, that the trial court committed an error of law by considering Father's fault in reaching its determination, thereby violating Tenn. Code Ann. § 36-4-121(a), which directs the courts to divide the marital property "without regard to fault." Husband calculates that the trial court awarded Wife 82% of the marital property, leaving him with only 18%, and he implies that so uneven a division of property can only be attributed to the court's condemnation of Husband's role in the breakdown of a marriage of twenty-five years. It is true that the trial court found that Husband was at fault for the failure of the marriage and that Wife had "zero fault." However, there is nothing in the court's pronouncements or any other part of the record to suggest that the court used fault as a basis for its determination. As we indicated above, the economic circumstances of the parties justify a property division weighted in favor of Wife, and such a division does not, in and of itself, create an implication that it was based on fault.

IV. ALIMONY

In this case, Chancellor Heldman awarded Wife \$3,700 as alimony *in futuro*. Chancellor Beal subsequently modified the award to \$3,000 per month. Husband does not dispute the nature of the award, but argues that either amount is excessive and an abuse of the trial court's discretion. Wife argues that the original award should not have been decreased.

Trial courts have broad discretion to determine whether spousal support is needed and, if so, its nature, amount, and duration. *Bratton v. Bratton*, 136 S.W.3d 595, 605 (Tenn. 2004); *Burlew v. Burlew*, 40 S.W.3d 465, 470 (Tenn. 2001). There are no hard and fast rules for spousal support decisions. *Manis v. Manis*, 49 S.W.3d 295, 304 (Tenn. Ct. App. 2001). Spousal support decisions require a careful balancing of the relevant factors, and the determinations hinge on the unique facts of each case. *Robertson v. Robertson*, 76 S.W.3d 337, 341 (Tenn. 2002).

Accordingly, appellate courts are generally disinclined to second-guess a trial court's spousal support decision unless it is not supported by the evidence or is contrary to public policies reflected in applicable statutes. *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001); *Nelson v. Nelson*, 106 S.W.3d 20, 23 (Tenn. Ct. App. 2002). Our role is to determine whether the award reflects a proper application of the relevant legal principles and that it is not clearly unreasonable. *Bogan*, 60 S.W.3d at 783. When the trial court has set forth its factual findings in the record, we will presume the correctness of those findings so long as the evidence does not preponderate against them. Tenn. R. App. P. 13(d); *Bogan*, 60 S.W.3d at 727; *Crabtree v. Crabtree*, 16 S.W.3d 356, 360 (Tenn.2000).

Tennessee Code Annotated § 36-5-121(i) directs the courts to consider all relevant factors “[i]n determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment.” The statute lists a number of nonexclusive factors to be considered.⁵ While one factor is “the relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so,” Tenn. Code Ann. § 36-5-121(i)(11), most of the factors relate to the relative financial situations of the parties and their ability to improve those situations.

The statutory factors to be considered include the relative earning capacity, obligations, needs, and financial resources of each party; the relative education and training of each party; the ability and opportunity and necessity of each party to secure such education and training in order to improve such party’s earning capacity to a reasonable level; and the assets of each party, whether they be separate assets or marital property awarded in the divorce. Tenn. Code Ann. § 36-5-101(d)(1)(E). It is well settled that the two most important factors to be considered in any spousal support determination are the disadvantaged spouse’s need and the obligor spouse’s ability to pay. *Bratton*, 136 S.W.3d at 604; *Robertson*, 76 S.W.3d at 342; *Bogan*, 60 S.W.3d at 730.

The record reveals that there were various amounts set forth as Husband’s income. His “regular wages” as listed on his most recent pay stub were shown as \$4,710.97 biweekly, which we calculate results in a regular gross monthly income of \$10,207.10. However, Husband’s own income and expense statement recites that “my gross wages and commission” are \$14,508 per month, and net take-home earnings are \$10,171 per month. The additional income which accounts for the discrepancy takes the form of annual bonuses, stock options, and a monthly car allowance.

⁵Those statutory factors are:

- (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
 - (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;
 - (3) The duration of the marriage;
 - (4) The age and mental condition of each party;
 - (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
 - (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;
 - (7) The separate assets of each party, both real and personal, tangible and intangible;
 - (8) The provisions made with regard to the marital property, as defined in § 36-4-121;
 - (9) The standard of living of the parties established during the marriage;
 - (10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
 - (11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so;
- and
- (12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

Husband's 2004 income tax return recites \$180,816 in "wages, salaries, tips, etc.," and \$12,289 in capital gains from the sale of Manitowoc stock. That comes to about \$16,093 per month. Further, he testified that his 2005 income amounted to about \$200,000, and that his 2006 income might come to a little less than \$180,000, not counting his exercise of stock options. His pay stub, dated July 7, 2006, shows that aside from wages he had year to date earnings of \$31,000 for travel expenses, \$3,125 for a car plan and a bonus amount of \$28,373.

Having reviewed the record, we cannot conclude that the evidence preponderates against the trial court's decision to set the monthly alimony award at \$3000 per month. Considering Husband's ability to pay and Wife's need for alimony, all the statutory factors, and the evidence, the award appears to us to reflect a proper application of the relevant legal principles and not to be unreasonable. Accordingly, we affirm the trial court's award to Wife of \$3000 per month in alimony *in futuro*.

V. CONTEMPT

Husband also appeals his conviction for criminal contempt. As we stated above, Husband was served with both a Motion for Civil Contempt and a Notice of Constitutional Rights. The Notice stated that Husband was being charged with criminal contempt, and it recited the constitutional rights to which a defendant to such a charge is entitled, including a presumption of innocence, the right to have guilt proven beyond a reasonable doubt, and "all other rights afforded to any other individual charged with violation of a criminal statute." Under Rule 42(b) of the Tennessee Rules of Criminal Procedure, a party accused of an act of criminal contempt (other than an act committed in the presence of the court) is entitled to proper notice and a hearing on the charges against him.

Husband argues that the two filings confused the proceedings, resulting in inadequate notice to him as to whether he would have to defend against a charge of civil contempt or one of criminal contempt. The two kinds of action have different purposes and require the satisfaction of different burdens of proof for conviction. *Overnight Transportation Co. v. Teamsters Local Union No. 480*, 172 S.W.3d 510 (Tenn. 2005); *Black v. Blount*, 938 S.W.2d 394, 398 (Tenn. 1996). But even if Wife is correct in asserting that the notice Husband received was sufficient, we believe that the process that resulted in Husband's conviction was fatally flawed.

Tennessee Code Annotated § 29-9-102(3) gives the courts the power to punish as contempt "[t]he willful disobedience or resistance of any officer of said courts, party, juror, witness or any other person, to any lawful writ, process, order, rule, decree, or command." Guilt in criminal contempt cases must be proved beyond a reasonable doubt, and the willful nature of the act must also meet the same standard of proof. *Bailey v. Crumb*, 183 S.W.2d 383, 389-90 (Tenn. Ct. App. 2005).

The Tennessee Supreme Court in *Konvalinka v. Chattanooga-Hamilton County Hospital Authority*, 249 S.W.3d 346 (Tenn. 2008), found that to support a finding of contempt for violation of a court order, there must be shown an actual willful violation of a lawful, unambiguous court

order.⁶ *Id.* at 354-55. “A person may not be held in civil contempt for violating an order unless the order expressly and precisely spells out the details of compliance in a way that will enable reasonable persons to know exactly what actions are required or forbidden.” *Id.* at 355.

Further, ambiguities in an order alleged to have been violated should be interpreted in favor of the person facing the contempt charge, and the determination of whether an order is sufficiently clear or unambiguous to be enforced in a contempt proceeding is a legal inquiry that is subject to *de novo* review. *Id.* at 355-358.

In the case before us, the agreed order that Husband would deposit \$85,000 with the Clerk and Master did not contain a specific deadline before which the money had to be deposited. The record shows that Husband deposited the money less than a month after the agreed order was filed. Wife argues that in general, if an order does not give a deadline for the performance of some required action, we are to construe the order as requiring the action within “a reasonable amount of time,” but that where an agreed order is involved, any such action should be performed immediately. While we agree that in the absence of a deadline a party should perform his court-ordered obligation within a reasonable amount of time, we find no basis for declaring a different rule for agreed orders.

Thus, a court should conduct an inquiry into the ability of the accused to comply with the order, give the defendant an opportunity to testify as to any facts which might negate the element of willfulness, and, in the case before us, take evidence and consider whether the interval between the execution of the agreed order and the deposit of the funds was reasonable.

In the present case, the husband was questioned extensively about his job and his income, with the trial court actively participating in that questioning. There were few questions relating to the deposit of funds with the clerk and master, but Husband testified that he had to take out a personal loan for a portion of the deposit because he did not have the full amount on hand. Nonetheless, the court simply declared at the conclusion of testimony that Husband’s delay was inexcusable and that he was guilty of criminal contempt beyond a reasonable doubt. We find that the evidence in the record does not support that conclusion. Accordingly, Husband’s conviction of criminal contempt must be vacated.

VI. ATTORNEYS FEES ON APPEAL

Wife was awarded the attorney fees she incurred at trial, in the amount of \$26,000. She asks us to also award her the attorney fees she incurred in this appeal. It is within the court’s discretion to award attorney fees needed to enforce a decree for alimony or child support. *Hoalcraft v. Smithson*, 19 S.W.3d 822, 830 (Tenn. Ct. App. 1999). Such awards have frequently been withheld when both parties were at least partially successful on appeal. *Smith v. Smith*, 984 S.W.2d 606, 610

⁶While the discussion in *Konvalinka* related to findings of civil contempt, the clarity requirement cannot be less stringent in criminal contempt cases. Both types of contempt sanctions can be imposed for willful disobedience of a lawful order or decree.

(Tenn. Ct. App. 1997); *Houghland v. Houghland*, 844 S.W.3d 619, 623 (Tenn. Ct. App. 1992); *Baggett v. Baggett*, 512 S.W.2d 292, 294 (Tenn. Ct. App. 1973). After consideration of the entire record, including Husband's payment of Wife's attorney fees at trial, the relative financial situations of the parties after divorce, and matters relating to Husband's contempt conviction, we believe it is equitable to have both parties pay their own attorney fees on appeal.

VII. CONCLUSION

Father's conviction for criminal contempt is vacated. In all other respects, the judgment of the trial court is affirmed. We remand this case to the Chancery Court of Williamson County for any further proceedings necessary. Tax the costs on appeal equally between the appellant and the appellee.

PATRICIA J. COTTRELL, P.J., M.S.